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Law

MEDICAL LAW

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction implements AFPD 51-3, *Civil Litigation*. It provides guidance and procedures for the Air Force Medical Law Program. It describes the functions, responsibilities, and activities of each program component. This instruction does not apply to the Air National Guard or the US Air Force Reserve.

SUMMARY OF REVISIONS

Realigns certain bases in MLC Regions. See **Attachment 2**. A | indicates revisions from the previous edition.

1. Medical Law Program. The Medical Law Program has two parts:

- The Medical Law Branch, Tort Claims and Litigation Division, Air Force Legal Services Agency (AFLSA/JACT), Arlington, Virginia.
- Twelve Medical Law Consultants (MLC). Ten are assigned to the Air Force Medical Centers; one is assigned to the 369th Medical Training Group, Sheppard AFB, Texas; and one is assigned to USAFE/SG.

1.1. The Judge Advocate General (TJAG) directs the Medical Law Program through the Medical Law Branch, AFLSA/JACT. The Surgeon General provides centrally managed manpower positions for MLCs. HQ AF/JAX makes all MLC assignments, and TJAG approves the assignments.

2. Responsibilities:

- 2.1. Chief, Medical Law Branch, AFLSA/JACT, and assigned personnel:
- Guide, direct, and coordinate all Air Force medical law activities.

- Evaluate, adjudicate, and settle medical malpractice claims processed under AFI 51-501; *Tort Claim*; report all closed claims to the Air Force Surgeon General; and provide assistance to AFMOA/SGPC for reporting to the National Practitioner Data Bank.
- Prepare litigation reports according to AFPD 51-3; assist in evaluating, discovering, settling, or trying Air Force medical malpractice litigation; and direct the support provided by MLCs or base claims officers.
- Oversee and instruct all Air Force medical law courses, conferences, and seminars; participate in other government health law programs.
- Provide assistance and advice to MLCs, visiting MLCs as appropriate.
- Crossfeed information to Air Force medical and legal communities on medical malpractice and quality assurance issues.
- Advise on all medicolegal, quality assurance, and other health law issues confronting the Air Force Surgeon General and staff.

2.2. MLCs are judge advocates with specialty training and are assigned primarily to Air Force medical centers. When assigned to an Air Force medical center, the MLC reports to and is directly supervised by the medical center commander. Functional and professional direction is provided to MLCs by the Chief, Medical Law Branch, AFLSA/JACT. MLCs serve three primary roles: malpractice claims review, medical center advisor, and advisor to area bases on medicolegal matters. MLCs:

- Review and evaluate medical malpractice claims filed within the MLC's region, using the format in **Attachment 1**.
- Arrange a review at another medical center for claims filed against the MLC's medical center.
- Advise regional base claims officers on how to produce a thorough and complete investigation file.
- Monitor all medical malpractice claims within the MLC's region to ensure they meet the time standards established by AFI 51-501; help the base claims officers finalize their investigations as quickly as possible.
- Help the base claims officer arrange medical examinations under the Hospital Recovery Claims Program or medical malpractice claims investigation.
- Assist, at the request of AFLSA/JACT, in defending and litigating medical malpractice cases brought against the MLC's medical center. If the US Attorney requests assistance, the MLC will first coordinate with the AFLSA/JACT staff attorney responsible for that case.
- May negotiate settlements of up to \$50,000 for medical malpractice claims they review, if the cases do not cause a conflict with the medical center. MLCs must coordinate these negotiations and settlements with the Chief, Medical Law Branch, AFLSA/JACT, and the base staff judge advocate (SJA). MLCs forward the case to AFLSA/JACT for final approval and payment after receiving the settlement agreement.
- Advise the commander and staff on all medicolegal issues. (On all issues that are not medicolegal in nature, such as military justice, contract law, or labor matters, the supporting base SJA furnishes professional legal services.)
- Advise the medical staff on any proposed actions or any medicolegal problems in administering the facility.

- Prepare or review regulations, legal documents, or instruments necessary for administering the facility.
- Serve on committees as necessary to help improve the quality of medical care at the facility.
- Serve on other committees as necessary to help the staff administer the medical center.
- Lecture at meetings, seminars, or conferences on quality assurance, risk management, and other medicolegal issues. The MLC assigned to the 396th Medical Training Group, Sheppard AFB, Texas, instructs at all legal courses for the Training Group.
- Give legal assistance to hospital inpatients and those staff members whose schedules prevent them from visiting the base legal office. MLCs will not normally see outpatients unless special circumstances arise.
- Consult with the base SJA on Standards of Conduct issues arising at the medical center.
- Perform other duties required by the medical center commander consistent with the position of MLC.
- Furnish MLC services to the specific Air Force medical facilities, base legal offices, and major commands (MAJCOM) listed in **Attachment 2**.
- Prepare and distribute medicolegal newsletters as appropriate advising the facilities and legal offices of medicolegal developments and trends.
- Visit each facility and base legal office at least once a year, or more often if needed, to lecture, teach, conduct medicolegal investigations, or to assist the credentials committee in conducting privileges hearings. (The medical center or unit to which the MLC is assigned funds these visits.)
- Help base claims officers in their role as legal advisors to the medical facility.
- Help MAJCOM surgeon and SJA as needed in any Medical Incident Investigation (MII) within the command.
- Give medicolegal advice to MAJCOM surgeon's office on matters affecting the command as a whole, coordinating with AFLSA/JACT and the MAJCOM staff judge advocate. If a MAJCOM office asks advice about a facility in another MLC's region, the MLC coordinates with that MLC.
- Send annual RCS: HAF-JA(A)8001, *Medical Law Report*, to the Chief, Medical Law Branch, Tort Claims and Litigation Division, Air Force Legal Services Agency. Use the format in **Attachment 3**. The reports are due not later than 31 October and will cover the preceding fiscal year. This report is designated emergency status code C2. Continue reporting during emergency conditions, normal precedence. Submit data requirements in this category as prescribed, or as soon as possible after submission of priority reports. Discontinue reporting during MINIMIZE.

3. Courses and Conferences:

3.1. Medical Law Course. Each judge advocate selected for a medical law position will attend the Medical Law Course (Course 50Z08816) before entering the position. The Surgeon General funds MLCs attending this course. The MLC assigned to Malcolm Grow USAF Medical Center is the course director and coordinates the curriculum with the Chief, Medical Law Branch, AFLSA/JACT.

3.2. Medical Law Consultant Conference. Each MLC will attend the annual MLC conference, conducted by AFLSA/JACT, for an update on the law and current policies of the Surgeon General, The Judge Advocate General, and the Department of Justice. The conference coincides with the MLC Course so that MLCs can spend one day instructing the new MLC students on practical topics. The MLC's medical center or unit funds his or her attendance.

3.3. Medical Law Mini-Course. This is a 1-week course offered once a year to train claims officers to investigate medical malpractice claims. The individual base legal office which nominates the claims officer funds his or her attendance. The MLC office at David Grant USAF Medical Center hosts the Mini-Course and coordinates the curriculum with the Chief, Medical Law Branch, AFLSA/JACT.

NOLAN SKLUTE, Maj General, USAF
The Judge Advocate General

Attachment 1

MEDICAL LAW CONSULTANT REVIEW FORMAT

A1.1. INTRODUCTION (identify as protected attorney work product and a Quality Assurance document)

A1.2. CHRONOLOGY OF CLAIM:

- Dates:
 - Incident Date(s)
 - Date Claim Filed (actual initial date received noted on Standard Form 95, **Claim for Damage, Injury, or Death**, no matter where received).
 - Six month Date.
 - Date Received at MLC Office.
 - Medical Review Date(s).
 - Date Litigation Filed (only insert if applicable).
 - Reasons For Delay (if any):
 - At Base.
 - At MLC.

A1.3. ALLEGATIONS:

- Liability (use same short statement on DD Form 2526, **Case Abstraction for Malpractice Claims**).
- Damages (amount and elements alleged).
- Attorney (name, address, phone, and expertise).
- Medical Providers and Facilities Significantly Involved (list each provider and include the standard of care (SOC) determination at base and MLC for each provider).

A1.4. FACTS:

- Personal Information (patient age, status, and sponsor's SSN, at time of incident and present).
- Relevant Material Facts (summarize and list medical record page numbers).

A1.5. MEDICAL ANALYSIS:

- Medical Condition (brief lay description).
- Medical Reviewers Opinions (summarize and discuss SOC for each provider, causation and damages).

A1.6. LEGAL ISSUES:

- Jurisdiction (proper claimant, timely filed, Feres, etc. [discuss only relevant issues]).
- Informed Consent (if relevant).

- Liability (SOC and proximate causation).
- Damages (discuss state law on wrongful death, damage caps, loss of chance, economic, non economic, "x" factor, etc.).

A1.7. RECOMMENDATIONS:

- Additional Work (tasks before sending claim to JACT).
- Quality Assurance Issues ("lessons learned").
- Deny or Settlement Range.

Attachment 2

MEDICAL LAW CONSULTANT REGIONS

A2.1. Malcolm Grow US Air Force Medical Center:

Andrews AFB, Maryland
Bolling AFB, District of Columbia
Dover AFB, Delaware
Lajes Field, Azores
Langley AFB, Virginia
McGuire AFB, New Jersey
Air Combat Command

A2.2. US Air Force Medical Center, Wright-Patterson:

Grand Forks, AFB, North Dakota
Griffiss AFB, New York (closes 30 Sep 95)
Grissom AFB, Indiana (closes 30 Sep 94)
Hanscom AFB, Massachusetts
K.I. Sawyer AFB, Michigan (closes 30 Sep 95)
Loring AFB, Maine (closes 30 Sep 94)
Minot AFB, North Dakota
Plattsburgh AFB, New York (closes 30 Sep 95)
Pope AFB, North Carolina
Seymour-Johnson AFB, North Carolina
Wright-Patterson AFB, Ohio
Air Force Materiel Command

A2.3. US Air Force Medical Center Scott:

Ellsworth AFB, South Dakota
Lowry AFB, Colorado (closes 30 Sep 94)
Malmstrom AFB, Montana
McConnell AFB, Kansas
Offutt AFB, Nebraska
Scott AFB, Illinois
Whiteman AFB, Missouri
Air Mobility Command

A2.4. David Grant US Air Force Medical Center:

Anderson AFB, Guam

Beale AFB, California

Castle AFB, California (closes 30 Sep 95)

Edwards AFB, California

Eielson AFB, Alaska

Elmendorf AFB, Alaska

Fairchild AFB, Washington

Hickam AFB, Hawaii

Kadena AB, Japan

Kunsan AB, Korea

Los Angeles AFB, California

March AFB, California (closes 31 Mar 96)

McChord AFB, Washington

McClellan AFB, California

Misawa AB, Japan

Norton AFB, California (closes 30 March 94)

Onizuka AFS, California

Osan AB, Korea

Travis AFB, California

Vandenberg AFB, California

Yokota AB, Japan

Pacific Air Forces

A2.5. US Air Force Medical Center, Keesler:

Barksdale AFB, Louisiana

Charleston AFB, South Carolina

Columbus AFB, Mississippi

Eglin AFB, Florida

Howard AFB, Canal Zone

Keesler AFB, Mississippi

Little Rock AFB, Arkansas

MacDill AFB, Florida (closes 30 March 94)

Maxwell AFB, Alabama

Moody AFB, Georgia
Patrick AFB, Florida
Robins AFB, Georgia
Shaw AFB, South Carolina
Tyndall AFB, Florida

A2.6. Wilford Hall US Air Force Medical Center:

Brooks AFB, Texas
Cannon AFB, New Mexico
Davis-Monthan, AFB, Arizona
F.E. Warren AFB, Wyoming
Goodfellow AFB, Texas
Hill AFB, Utah
Holloman AFB, New Mexico
Kelly AFB, Texas
Kirtland AFB, New Mexico
Lackland AFB, Texas
Laughlin AFB, Texas
Luke AFB, Arizona
Mountain Home AFB, Idaho
Nellis AFB, Nevada
Peterson AFB, Colorado
Randolph AFB, Texas
US Air Force Academy, Colorado
Air Education and Training Command
Space Command

A2.7. 396th Medical Training Group, Sheppard AFB, Texas:

Altus AFB, Oklahoma
Dyess AFB, Texas
Reese AFB, Texas
Sheppard AFB, Texas
Tinker AFB, Oklahoma
Vance AFB, Oklahoma

A2.8. US Air Force in Europe:

RAF Alconbury, United Kingdom

Aviano AB, Italy

Bitburg AB, Germany

RAF Chicksands, United Kingdom

Geilenkirchen AB, Germany

Incirlik AB, Turkey

Izmir AS, Turkey

RAF Lakenheath, United Kingdom

RAF Mildenhall, United Kingdom

Oslo, Norway

Ramstein AB, Germany

Rhein-Main AB, Germany

San Vito Dei Normanni AS, Italy (closes in 1994)

Sembach AB, Germany

Spangdahlem AB, Germany

Soesterberg AB, Netherlands (closes in 1994)

United States Air Forces Europe

Attachment 3

RCS: HAF-JA(A)8001, MEDICAL LAW REPORT, FORMAT

A3.1. Malpractice claims reviewed from:

- The MLC's region.
- Other medical centers.
- AFLSA/JACT.
- Other regions.

A3.2. Processing times (fiscal year average):

- Claims office initial investigation (AFI 51-501) by individual base. Attach to the report a list of all claims the base reviewed and the base's initial and final investigation processing time for each claim.
- MLC office.

A3.3. Litigation assistance.

A3.4. Consultant trips and other temporary duty.

A3.5. Committees and meetings attended.

A3.6. Lectures and briefings given.

A3.7. Consent forms, regulations, and affiliation agreements reviewed.

A3.8. Legal assistance

- Clients seen.
- Wills.
- Powers of Attorney.
- Notarizations--Special and General
- Patient Self Determination Act documents.

A3.9. Other items of interest.